



REMARKS

Claim Status

Claims 21-25, 27, 28, 30, and 31 were rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 3,078,017 (Waskonig) in view of United States Patent No. 5,307,955 (Viegas).

Claims 26 and 32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Waskonig in view of Viegas and further in view of United States Patent No. 3,078,016 (Judy).

Claim 29 was rejected under 35 U.S.C. §103(a) as being unpatentable over Waskonig in view of Viegas and further in view of United States Patent No. 6,308,923 (Howard).

Claims 33-40 were withdrawn. Claims 21-32 are pending.

Double Patenting

Claims 21-32 were rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 8, 10-27, and 30-39 of United States Patent No. 7,261,221. *Office Action*, page 2. Applicant objects to the Office's obviousness-type double patenting rejections of claims 21-32 as being premature. In particular, Applicant notes that the Office has not indicated that all claims would be allowable if Applicant submits a terminal disclaimer to overcome the double-patenting rejection. Further, the Office has asserted additional rejections of claims 21-32 under 35 U.S.C. §103(a) that are not related to the double-patenting rejection, and thus such rejections will not be overcome by merely filing the terminal disclaimer. Notably, Applicant has amended claims 21 and 32 and presented arguments in the present reply, and may further amend the claims and present additional arguments during prosecution, with respect to claims 21 and 32. It is therefore premature for Applicant to surrender Applicant's valuable intellectual property rights (e.g., patent term and/or ability

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to convey ownership) by filing a terminal disclaimer when pending claims have been amended and have not otherwise been indicated as allowable.

However, in the interest of advancing prosecution of the present application, Applicant states that Applicant will execute and file a terminal disclaimer, if upon reviewing the present (and any possible future) amendments, the Examiner determines that a terminal disclaimer is necessary, and the Examiner indicates that these claims would be allowable if such a terminal disclaimer is filed, overcoming the Examiner's obviousness-type double patenting rejections. Applicant, thus, does not prematurely surrender Applicant's rights (i.e., before knowing the scope of the claims to be allowed).

Accordingly, Applicant requests reconsideration of the rejection of claims 21-32 under the judicially created doctrine of obviousness-type double patenting and an indication that the claims would be allowable in the event the terminal disclaimer is filed.

Claims 21-31 are Allowable

Applicant respectfully traverses the rejections to claims 21-31. The cited references do not disclose or suggest the specific combination of claim 21. For example, the combination of Waskonig and Viegas does not disclose or suggest a system where a back side of a container has a planar section that extends in the direction from a lower portion to an upper portion that engages a surface but is not attached to the surface, and where the back side has a tapered section that extends from the planar section in the direction from the lower portion to the upper portion, as set forth in claim 21. Support for this claim amendment may be found in at least page 10, lines 17-28; page 11, lines 7-8; and Figures 3A and 6 of the application.

Waskonig discloses a tube suspended from a suction device that is attached to a vertical surface. *Waskonig*, Fig. 2. The tube includes a tube shoulder and a body that tapers from the tube shoulder to the location of suspension by a hook of the suction

device. *Waskonig*, Fig. 2. The tube does not engage the vertical surface at any location. *Waskonig*, Fig. 2.

Viegas is directed towards a package for storing fluid materials that is flaccid and bag like so that a reduced amount of material is used in making up the package to save natural resources. *Viegas*, column 2, lines 25-32. The package is made in such a manner that it is capable of standing on its own when displayed on a store shelf so that advertising material on the package can be read. *Viegas*, column 2, lines 53-61.

In contrast to claim 21, the cited portions of *Waskonig* and *Viegas* fail to disclose or suggest a system where a back side of a container has a planar section that extends in the direction from a lower portion to an upper portion that engages a surface but is not attached to the surface, and where the back side has a tapered section that extends from the planar section in the direction from the lower portion to the upper portion. A planar section on a back side that extends in the direction from a lower portion to an upper portion is not present in *Waskonig* as the portion of the tube that extends from the shoulder to the notch is completely tapered at all points and a planar section is not present. *Waskonig*, Fig. 2. *Viegas* discloses a flaccid package that stands upright due to the construction of the bottom and thus fails to disclose a planar surface as claimed. *Viegas*, column 2, lines 53-61. Therefore, the combination of *Waskonig* and *Viegas* fails to disclose this feature of claim 21.

Further, the tube of *Waskonig* does not engage a surface. Instead, the suction hook engages the surface and has a hook onto which the tube is suspended. *Waskonig*, Fig. 2. The reference does not disclose any portion of the tube engaging the surface. *Waskonig*, Fig. 2. *Viegas* discloses a package with a bottom designed to allow the package to stand on its own on a store shelf without being packaged in an outer carton. *Viegas*, column 2, lines 58-61. The back side of the package is not disclosed as engaging a surface. Therefore, the combination of *Waskonig* and *Viegas* fails to disclose this additional feature of claim 21.

Additionally, the cited references fail to disclose a tapered section that extends from the planar section in the direction from the lower portion to the upper portion, as in claim 21. Waskonig discloses a tube in which a tapered wall extends from a conical tube shoulder and a planar section is not present. *Waskonig*, Fig. 2. The structure of the tube in Waskonig is tubular and a planar surface is not present and there would be no point for one to include same. Viegas discloses a flaccid package and does not disclose either a planar section or a tapered section. Therefore, the aforementioned relationship of the tapered section with respect to the planar section is necessarily absent. The combination of Waskonig and Viegas fails to disclose this additional feature of claim 21. Hence, claim 21 is allowable.

Applicant submits that claim 21 defines over the combination of Waskonig and Viegas and is in condition for allowance. Further, all claims that depend from claim 21 (claims 22-31) are also in condition for allowance as their rejections are rendered moot due to the allowance of independent claim 21.

Additionally, incorporation of the other references cited in the Office Action into the combination of Waskonig and Viegas fails to achieve the structure set forth in claim 21. For example, Judy discloses a fluid dispenser that has a flat and elongated mounting plate. *Judy*, column 3, lines 27-29. The mounting plate lays against a vertical surface and screws are disposed therethrough in order to attach the mounting plate against the vertical surface. *Judy*, Fig. 2. As such, the entire mounting plate is attached to and engages the vertical surface. *Judy*, Fig. 2.

Incorporation of the mounting plate of Judy into the combination of Waskonig and Viegas fails to disclose a back side of a container that has a planar section that extends in the direction from a lower portion to an upper portion that engages a surface but is not attached to the surface, and where the back side has a tapered section that extends from the planar section in the direction from the lower portion to the upper portion, as

set forth in claim 21. Incorporation of the mounting plate of Judy into the tube of Waskonig would cause the entire tube to be a flat surface as the entire mounting plate of Judy is a flat surface. Further, this planar surface would be both attached to and engaged to the vertical surface as Judy discloses this structure. Further, even assuming one would leave the tapered section on the tube of Waskonig upon incorporation of Judy, none of the references provide any insight as to where the tapered section would be in relation to the planar section as called for in claim 21. Hence, claim 21 is allowable for this additional reason.

Claim 32 is allowable

Applicant respectfully traverses the rejection to claim 32. The cited references do not disclose or suggest the specific combination of claim 32. For example, the combination of Waskonig, Viegas, and Judy does not disclose or suggest a system with a lid that prevents fluid from being dispensed when in a closed position, and where the lid contacts a surface but is not attached to the surface when in an open position, as set forth in claim 32. Support for this claim amendment may be found in at least page 8, lines 19-25; page 11, lines 3-9; and Figure 6 of the application.

The cited portions of Waskonig disclose a suction cup that functions as a lid during transport. *Waskonig*, column 1, lines 26-29. The suction cup is attached to a vertical surface and has a hook onto which the tube is suspended. *Waskonig*, Fig. 2.

The cited portions of Viegas disclose a flip cap attached to a valve assembly that can be closed during transport to prevent accidental leakage. *Viegas*, column 7, lines 1-4. The flip cap is contained within a bottom of the package that has edges configured to allow the package to stand by itself on a store shelf. *Viegas*, column 2, lines 53-61; Fig. 2.

The cited portions of *Judy* disclose a valve member through which fluid is dispensed when the fluid dispenser is actuated. *Judy*, column 3, line 71 to column 4, line 5.

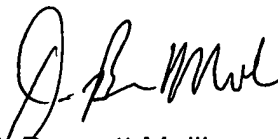
In contrast to claim 32, the cited portions of *Waskonig*, *Viegas* and *Judy* fail to disclose or suggest a system with a lid that prevents fluid from being dispensed when in a closed position, and where the lid contacts a surface but is not attached to the surface when in an open position, as set forth in claim 32. The suction cup of *Waskonig* functions as a lid in a closed position, but is attached to the vertical surface when the tube is used to dispense fluid. *Waskonig*, Fig. 2. The valve member 60 of *Judy* is disposed at all times on the front surface of the fluid dispenser and does not contact the vertical surface to which the fluid dispenser is attached. *Judy*, Fig. 2. The cited portions of *Viegas* disclose a flip cap that when in an open position is completely contained within a perimeter of the packaging. *Viegas*, Fig. 1. As such, the flip cap does not contact a surface when it is in an opened position. Therefore, the combination of *Waskonig*, *Viegas* and *Judy* fails to disclose or suggest at least one element of claim 32. Applicant submits that claim 32 defines over the combination of *Waskonig*, *Viegas* and *Judy* and is in condition for allowance.

Inasmuch as all outstanding issues raised by the Examiner have been addressed, it is respectfully submitted that the present application is in condition for allowance, and action to such effect is earnestly solicited. The Examiner is encouraged to telephone the undersigned at his convenience should only minor issues remain after consideration of the present Amendment, to permit early resolution of same.

Please charge any additional fees required by this Amendment to Deposit Account No. 50-3172.

Respectfully submitted,

J. BENNETT MULLINAX, LLC

A handwritten signature in black ink, appearing to read "J. B. Mullinax", written in a cursive style.

J. Bennett Mullinax

Reg. No. 36,221